

*EXHIBIT C*

United States Department of State

# Guidance for Law Enforcement Officers

Personal Rights and Immunities of  
Foreign Diplomatic and Consular Personnel



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## Preface

International law, to which the United States is firmly committed, requires that the domestic law enforcement authorities of the United States extend certain extraordinary privileges and immunities to members of foreign diplomatic missions and consular posts. Most of these privileges and immunities are not absolute, however, and in any event law enforcement officers retain their fundamental responsibility to protect and police the orderly conduct of persons present in the territory of the United States. This booklet provides an understandable guide to the various categories of foreign mission personnel and the privileges and immunities to which they are entitled. It explains how properly to identify (and verify the identity of) such persons and furnishes guidance to assist law enforcement officers in the handling of incidents involving foreign diplomatic and consular personnel.

# I

## Introduction

The principle of diplomatic immunity is one of the oldest concepts of foreign relations. Ancient Greek and Roman governments, for example, accorded special status to envoys, and the basic concept has evolved and endured until the present. As a matter of international law, diplomatic immunity was primarily based on custom and international comity until quite recently. In the period since World War II, a number of international conventions (most noteworthy, the Vienna Convention on Diplomatic Relations) have been concluded. These conventions have formalized the rules and made their application more uniform.

Notwithstanding the antiquity of the concept of diplomatic immunity, its purpose is often misunderstood by the citizens of this and other countries. Occasional abuses of diplomatic immunity, which are brought to public attention, have also served to prejudice public attitudes toward this practice. Dealing with the concept of immunity poses particular problems for law enforcement officers who, by virtue of their oath and training, are unaccustomed to granting special privileges or concessions to individuals who break the law. On the other hand, police officers who understand the importance of diplomatic immunity may be inclined to be overly generous in its application if they do not have a full understanding of its rules. It is the purpose of this booklet to familiarize police officers with the general rules of diplomatic immunity and to provide them with specific guidance regarding the handling of difficult situations.

Reference has been made above to *diplomatic immunity*. This term is popularly, and erroneously, understood to refer to the special protections afforded *all* employees of foreign governments who are present in the United States as official representatives of their home governments. Law enforcement officials, however, must have a more sophisticated understanding of the concept. Currently in the United States, about 118,000 persons are entitled to some degree of special privilege under international law. Some of these persons are members of diplomatic missions, others are assigned to consular posts, and still others are employees of international organizations or members of national missions to such international organizations. For each of these categories of persons, particular rules apply and, even within these categories, different degrees of immunity may be accorded to different classes of persons. Most of these persons are assigned to Washington, D.C., and New York City, but large numbers are assigned in major cities around the country. Moreover, nearly all of these persons are free to travel around the country either on official business or for pleasure.

## II

### Legal and Practical Basis of Immunity

The special privileges and immunities accorded foreign diplomatic and consular representatives assigned to the United States are not undertaken by the United States arbitrarily but rather reflect rules developed among the nations of the world regarding the manner in which civilized international relations must be conducted. The underlying concept is that these foreign representatives may carry out their duties effectively only if they are accorded a certain degree of insulation from the application of the laws of the host country. These persons are sent out to various foreign countries armed with the expertise necessary to carry out their official functions, but they often lack a full understanding of the local customs and laws. Customs, laws, and even systems of government vary widely around the world. The nations of the world have effectively recognized that diplomatic relations may not be efficiently conducted if every diplomatic or consular representative must in every case comply with the specific provisions of the local law. Moreover, particularly between hostile countries, there exists the fear that a lack of immunity might lead to the host country using the vagaries of local law to punish the "bringers of bad news" or to harass diplomats by bringing false legal charges.

The various categories of immunity are explained below (and a table is provided to summarize elements of paramount concern to law enforcement officials), but all have a common legal foundation. While customary international law continues to refine the concepts of diplomatic, consular, and international organization immunity, the basic rules are at present all embodied in international treaties, many of which have been formally adopted by the United States and which are, pursuant to the U.S. Constitution, "the supreme law of the land." The rights and privileges granted by these treaties are thus enforceable in the courts of the United States, and the U.S. Government is legally bound to ensure that such rights are respected by its states and municipalities.

U.S. law regarding diplomatic immunity has its roots in England. In 1708 the British Parliament formally recognized diplomatic immunity and banned the arrest of foreign envoys. In 1790, the United States passed similar legislation which provided absolute immunity for diplomats, their families and servants, as well as for lower ranking diplomatic mission personnel. This 1790 law remained in force until 1978, when the present Diplomatic Relations Act (22 U.S.C. 254) was enacted to replace it. The principal purpose of the 1978 Act was to bring U.S. law into line with the 1961 Vienna Convention on Diplomatic Relations (which had entered into force for the United States in 1972). The 1978 Act imposed a more precise regime and, in some cases, reduced the degree of immunity enjoyed by some of the personnel of diplomatic missions.

On a practical level, failure of the authorities of the United States fully to respect the privileges of foreign diplomatic and consular personnel may complicate diplomatic relations between the United States and the other State concerned. It also may lead to harsher treatment of U.S. personnel abroad, since the principle of reciprocity has from the most ancient times been integral to diplomatic and consular relations.

It should be emphasized that even at its highest level, diplomatic immunity does not exempt diplomatic officers from the obligation of conforming with national and local



laws and regulations. Diplomatic immunity is not intended to serve as a license for such persons to flout the law and purposely avoid liability for their actions. The purpose of these privileges and immunities is not to benefit individuals but to ensure the efficient and effective performance of their official missions. This is a crucial point for law enforcement officers to understand in their dealings with foreign diplomatic and consular personnel. While police officers are obliged, under international customary and treaty law, to recognize the immunity of the envoy, they must not ignore or condone the commission of crimes. As is explained in greater detail below, the proper performance of police procedures in such cases is often essential in order for the United States to formulate appropriate measures **through diplomatic channels** to deal with such offenders.

### III

## Categories of Persons Entitled to Privileges and Immunities

### Staffs of Diplomatic Missions

Diplomatic missions are traditionally the principal communication link between the country which sends them and the host country. Accordingly, the staffs of diplomatic missions (embassies) are afforded the highest level of privileges and immunities in the host country in order that they may effectively perform their important duties. Under modern international law (reflected in the Vienna Convention on Diplomatic Relations), however, it is recognized that there are different categories of persons within each diplomatic mission, some of whom must be accorded greater protections than others.

The categories of diplomatic mission personnel are defined primarily with reference to the functions performed.<sup>1</sup> *Diplomatic agent* is the term assigned to ambassadors and the other diplomatic officers who generally have the function of dealing directly with the host country officials. This category, of course, enjoys the highest degree of immunity. The next category is the *members of the administrative and technical staff* of the mission, which includes those persons who perform sophisticated and often sensitive duties but serve primarily in support of the activities of diplomatic agents. This category includes secretaries, certain clerical personnel, office managers, and certain professional security personnel. Members of the administrative and technical staff also enjoy a high level of privileges and immunities but one which in some respects is less than diplomatic agents. Finally, there are the *members of the service staff* of the diplomatic mission who perform more menial tasks such as driving, cleaning, and building and grounds maintenance. These persons are afforded significantly less in the way of privileges and immunities. The privileges and immunities of each of these categories is explained in more detail below, and a table is provided to summarize those elements of the applicable privileges and immunities of greatest interest to law enforcement personnel.<sup>2</sup> Also provided is an explanation of some important exceptions to the general rules. (Discussion of tax and customs duty exemptions and other technical matters not of immediate concern to law enforcement personnel is not included in this booklet.)

**Diplomatic Agents.** Diplomatic agents enjoy the highest degree of privileges and immunities. They enjoy complete personal inviolability, which means that they may not be arrested or detained; they are owed a special measure of respect and protection; and neither their property nor residences may be entered or searched. Diplomatic agents

<sup>1</sup>The definition of these categories is necessarily general since the category into which specific individuals fall may differ depending on reciprocal practices with the countries concerned. Law enforcement personnel, however, do not need to worry about these fine distinctions in operational situations. Their burden is simply to assure that the appropriate degree of immunity is afforded once the person concerned has been precisely identified.

<sup>2</sup>The private servants of diplomatic personnel enjoy no jurisdictional immunity or inviolability in the United States and are therefore not discussed in this booklet.

also enjoy complete immunity from the criminal jurisdiction of the host State and thus cannot be prosecuted no matter how serious the offense. (While it is not ordinarily of concern to police authorities, they also have immunity from civil suit except (a) in connection with real property transactions not conducted on behalf of the mission; (b) in connection with any role they may play as executor for or heir to an estate being distributed in the host country; (c) in connection with the performance of professional or commercial activities outside the scope of their official duties; or (d) in respect of counter-claims on the same subject matter when they have been the initiating party in a suit.) Finally, they enjoy complete immunity from the obligation to provide evidence as witnesses and cannot be required to testify even, for example, when they have themselves been the victim of a crime.

Family members forming part of the household of diplomatic agents (recognized by the Department of State as such) enjoy precisely the same privileges and immunities as do the sponsoring diplomatic agents.<sup>3</sup>

**Members of Administrative and Technical Staff.** Members of the administrative and technical staff of a diplomatic mission perform tasks critical to the inner workings of the embassy. Accordingly, they enjoy privileges and immunities identical to those of diplomatic agents in respect of personal inviolability, immunity from criminal jurisdiction, and immunity from the obligation to provide evidence as witnesses. (Their immunity from civil jurisdiction, however, is quite different. Members of the administrative and technical staff enjoy immunity from civil jurisdiction only in connection with the performance of their official duties. This situation is generally known as *official acts* or *functional* immunity and is explained in more detail in the section below addressing consular privileges and immunities.)

Like those of diplomatic agents, the recognized family members of administrative and technical staff enjoy the same privileges and immunities from the host country's criminal jurisdiction as their sponsors. Since these family members have no official duties to perform, they enjoy no immunity from civil jurisdiction.

**Members of Service Staff.** Members of the service staff of diplomatic missions perform more menial support tasks for the missions and are therefore accorded much less in the way of privileges and immunities than are those in the other categories. Service staff members have only official acts immunity (see further explanation below) in connection with all aspects of host State jurisdiction, and they enjoy no personal inviolability or immunity from the obligation to provide evidence as witnesses. The families of service staff members enjoy no privileges or immunities.

**Nationals or Permanent Residents of the United States.** The general rules set forth above assume that the staff members of the diplomatic mission are nationals of the sending country or some third country. Traditionally, countries are unwilling to surrender any jurisdiction over their own nationals, and the modern treaty regime states

<sup>3</sup>The Department of State has placed limits on who may be considered "family" in this connection. In summary, it is only spouses, and children until the age of 21 (until the age of 23 if they are full-time students at an institution of higher learning), and such other persons expressly agreed to by the Department in extraordinary circumstances.

precise rules on this point. The United States, as a matter of policy, does not normally accept the accreditation of its own nationals or permanent residents as diplomatic agents but, were it to do so, such diplomatic agents would enjoy inviolability and jurisdictional immunity only in connection with the performance of official acts. The family members of diplomatic agents enjoy no privileges or immunities if they are *nationals* of the United States. And, if they are nationals or *permanent residents* of the United States, both members of the administrative and technical staff (including their families) and members of the service staff enjoy no privileges and immunities.

Police officers should not commonly have to deal with this distinction since the Department of State will normally have issued identity documents (see further discussion below) with the nationality principle in mind. It is important for law enforcement officials to understand these principles generally, however, because they could confront a situation, for example, wherein the U.S. citizen spouse of a foreign national diplomatic agent (who lacks the correct identity documents) attempts to establish his or her immunity solely on the basis of proving a relationship with the diplomatic agent.

**Special Bilateral Agreements.** There are some foreign countries in respect of which the categories set forth above are not applicable. These are countries with which the United States has concluded bilateral agreements which grant to all members of the staff of their respective embassies (provided that they are nationals of the sending country) the privileges and immunities to which only diplomatic agents are normally entitled.<sup>4</sup> Again, this situation will be taken care of when identity documents are issued, but police officers should be aware of this distinction because they may have to confront situations where a chauffeur or mechanic from the embassy of one of these countries asserts a right to full diplomatic privileges and immunities.

**Waiver.** Always keep in mind that these privileges and immunities are extended from one country to another in order to permit their respective representatives effectively to perform their duties; in a sense, it may be said the sending countries "own" these privileges and immunities. Therefore, while the individual enjoying such immunities may not effectively waive them, the sending States can and occasionally does do so. Police authorities should never address the commission of a serious crime by a person enjoying full criminal immunity with the belief that there is **no possibility** that a prosecution could result. The seeking of waiver of immunity is handled entirely via diplomatic channels, but effective and informed police work remains the foundation of a successful prosecution should the Department of State succeed in obtaining a waiver of immunity in a particular case.

### **Members of Consular Posts (Normal and Special Bilateral)**

Consulates and their foreign personnel are often erroneously considered to be identical to foreign embassies and their staffs in the popular view of privileges and immunities. Traditionally, however, the function of consular posts is fundamentally different from that of the diplomatic missions. Consulates do not have the principal role of pro-

<sup>4</sup>At present, there are such agreements with the U.S.S.R., China, and the German Democratic Republic (East Germany).

viding communication between the two countries but rather perform a variety of functions of principal interest to their respective sending countries (e.g., issuance of travel documents, attending to the difficulties of their own countrymen who are present in the host country, and generally promoting the commerce of the sending country). Countries have long recognized the importance of consular functions to their overall relations but have been willing to grant only a significantly lower measure of privileges and immunities to the persons assigned to their countries at consular posts.<sup>5</sup> The modern treaty regime (reflected in the 1963 Vienna Convention on Consular Relations) recognizes a hierarchy within the staff of the consular posts but, since the privileges and immunities are already few, there is not a great deal of practical difference in the degree of immunity afforded the two general categories.

**Consular Officers.** Consular officers, generally speaking, are those members of consular posts who are recognized by both the sending and the host country as fully authorized to perform the broad array of formal consular functions. They have only *official acts* or *functional* immunity in respect of both criminal and civil matters (no civil immunity under any circumstances for actions arising from personal contracts or accidents caused by vehicles, vessels, or aircraft which they are operating), and their personal inviolability is quite limited. Consular officers may be arrested pending trial provided that the underlying offense is a felony and that the arrest is made pursuant to a decision by a competent judicial authority (e.g., a warrant issued by an appropriate court).<sup>6</sup> Consular officers enjoy complete immunity from the obligation to provide evidence as witnesses in connection with matters involving their official duties, to produce official documents, or to provide expert witness testimony on the laws of the sending country. Without a special bilateral agreement to the contrary, the family members of consular officers enjoy no personal inviolability and no jurisdictional immunity of any kind.

As is indicated by the above, the concept of official acts immunity pertains in numerous different circumstances. It is very important that law enforcement officers understand the nature of this protection. Most importantly, it is essential to know that no law enforcement officer (or State Department officer, for that matter) is expected or authorized to determine whether a given set of circumstances constitutes an *official act*. Rather, this is an issue which may only be resolved, as a matter of law, by the host country court with subject matter jurisdiction over the alleged crime. Thus, a person enjoying official acts immunity from criminal jurisdiction may always be prosecuted if

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<sup>5</sup>The United States has, however, concluded special Consular Conventions with such countries as the U.S.S.R., China, Poland, East Germany (German Democratic Republic), and Hungary and a bilateral agreement with the Philippines under which certain of their consular personnel in the United States (and sometimes their families) obtain significantly higher privileges and immunities, in some cases approximating those afforded diplomatic agents. These arrangements are not uniform, so law enforcement officers will have to be governed by the official identity documents which have been issued by the Department of State to such personnel.

<sup>6</sup>Police officers should note this distinction carefully. In connection with other categories discussed in this booklet, either a person is absolutely protected from arrest or, alternatively, he or she has no immunity from arrest whatsoever. In the case of career consular officers, such arrest may be carried out only if the police officer is operating under the authority of a warrant or similar judicial authorization. Note, however, the discussion below of the public safety prerogatives of police authorities.

the responsible host government authorities believe that the criminal act is outside the scope of the individual's official duties, and may in this connection always be required to appear in court (in person or through counsel). At this point, however, such person may assert as an affirmative defense that the actions complained of arose in connection with the performance of official acts. If, upon examination of the circumstances complained of, the court agrees, then the court is without jurisdiction to proceed and the case must be dismissed. Of course, even though only a court may finally rule in such cases, it is reasonable for law enforcement authorities to make decisions on whether or not to proceed with a case based on their own assessment of the court's likely decision on a particular fact situation.

**Consular Employees.** Consular employees perform the administrative and technical services for the consular post. They have no personal inviolability, only official acts immunity, and enjoy immunity from the obligation to provide evidence as witnesses only in respect of official acts. Their family members enjoy no personal inviolability or jurisdictional immunities of any kind.

**Consular Service Staff.** Consular service staff do not enjoy personal inviolability or jurisdictional immunity of any kind, but they do have immunity from the obligation to provide evidence as witnesses in respect of official acts. Their family members enjoy no personal inviolability or jurisdictional immunity of any kind.

**Nationals or Permanent Residents of the United States.** As is the case with staff of diplomatic missions, members of consular posts have reduced privileges and immunities if they are U.S. nationals or permanent residents. In particular, consular officers who are U.S. nationals or permanent residents have personal inviolability only in respect of the performance of official acts; jurisdictional immunity only in connection with official acts; and immunity from the obligation to provide evidence as witnesses only in respect of official acts. Consular employees and consular service staff who are U.S. nationals or permanent residents enjoy no personal inviolability or jurisdictional immunity in the United States.

**Honorary Consuls.** Consular officers who are accredited as full-time practitioners of consular functions are referred to as "career" consular officers. These officers are normally nationals of the sending country who are sent to the United States to perform these functions for a specific period and then are transferred to a further assignment. Career consular officers are in fact prohibited by international law from engaging in professional or commercial activities outside the scope of their official consular functions.

Another category is that of "honorary" consular officers. These are generally part-time employees of the sending country who provide a degree of consular representation in places not covered by career consular officers. The privileges and immunities of honorary consular officers approximate those of career consular officers, with limitations in certain respects. In addition, it is U.S. policy to recognize as honorary consular officers only those who are U.S. nationals or permanent residents (see above). Accordingly, honorary consular officers in the United States have personal inviolability only in connection with official acts (arrest of honorary consuls is not limited only to felonies and does not require a warrant, as is the case with career consular officers), and enjoy

only the more restricted form of official acts immunity accorded U.S. nationals or permanent residents, and immunity from the obligation to provide evidence as witnesses only in respect of official acts. Their family members enjoy no personal inviolability and no jurisdictional immunity of any kind.

**Waiver.** As is the case with members of the staffs of diplomatic missions, the sending country may always waive the privileges or immunities of its members of consular posts. This is, however, less likely to be an issue for consular personnel, since their immunities in general are so limited.

## **International Organization Personnel and National Missions to Such Organizations**

International organizations, such as the United Nations, are a relatively modern development. The privileges and immunities of the personnel of such organizations and the personnel of national missions to such organizations have a different basis than that of diplomatic and consular representatives. In the case of international organizations, the nations concerned have agreed that the important purposes of such organizations may only be accomplished if a certain measure of privileges and immunities are afforded to their participants. The nations concerned have concluded treaties embodying such grants of privileges and immunities and have also (e.g., in the case of the United States) enacted domestic legislation granting certain minimal privileges and immunities to certain categories of persons not covered by the treaties. In determining degree of inviolability or immunity, law enforcement officers will be governed primarily by the identity documents which have been issued to such persons. The following, however, provides a very general overview of the distribution of privileges and immunities in connection with international organizations.

**Personnel of International Organizations.** International organizations which have headquarters or other offices in the United States are staffed with the number of administrative and executive employees necessary to carry out their functions. The vast majority of these employees enjoy only official acts immunity as provided for by U.S. domestic legislation (the International Organizations Immunities Act (22 U.S.C. 288)) and no personal inviolability. In certain cases, however, the most senior executives of such organizations have been accorded privileges and immunities equal to those afforded *diplomatic agents*. This is the case for the Secretary General and all Assistant Secretaries-General of the United Nations.

**Personnel of National Missions to International Organizations.** The United Nations and the Organization of American States are headquartered in the United States, and most of their member States maintain permanent missions in the United States. The persons staffing these missions are accredited to the international organization concerned (not to the United States), but their privileges and immunities are nonetheless often defined by reference to the status of diplomatic personnel who are accredited to the United States.

As is the case with diplomatic missions, the assignment of privileges and immunities is differentiated generally on the basis of the functions performed. Pursuant to international law, the most senior representatives in these missions to international

organizations have privileges and immunities equivalent to those afforded *diplomatic agents*. The remainder of the staffs of these missions have only official acts immunity pursuant to the International Organizations Immunities Act and no personal inviolability.

Persons visiting in the United States on short-term official duty with **diplomatic** missions are ordinarily not recognized as enjoying any privileges and immunities (law enforcement authorities should nonetheless always seek prompt verification from the Department of State in particular cases involving such individuals). In the case of the United Nations, however, a different legal situation exists whereby short-term official visitors from other States to the United Nations or to international conferences convened by the United Nations may enjoy full diplomatic immunity equivalent to that afforded diplomatic agents. Owing to the temporary nature of their visit, such officials will normally not have the usual official identity documents recognizable in the United States. Law enforcement officials (particularly in New York) should therefore be sensitive to the existence of this situation and always coordinate with the U.S. authorities indicated below if confronted with an apparent offender appearing to fall into this category.



## IV

# Identification of Persons Entitled to Privileges and Immunities in the United States

As can be seen from the general outline of the different categories of persons enjoying privileges and immunities, it is critical from a law enforcement officer's point of view to identify quickly and accurately the category of any person asserting immunity. Numerous documents are associated with foreign diplomats; only some provide an accurate indication of the status of the holder. This section endeavors to explain the array of documents and clarify for police officers which ones may be relied upon.

## Foreign Diplomatic Passports and U.S. "Diplomatic" Visas: Not Conclusive

Most foreigners in the United States who enjoy any degree of privileges and immunities possess a diplomatic passport issued by their country with a so-called "diplomatic" ("A" or "G") visa entered by U.S. authorities.<sup>7</sup> However, foreign diplomatic passports (even those which contain U.S. diplomatic visas) are not authoritative indications that their bearers enjoy any degree of privileges or immunities in the United States. This is the case because both foreign diplomatic passports and U.S. diplomatic-type visas are issued to a broad range of persons, including those who have no association with the categories of persons described in this booklet and who therefore enjoy no privileges and immunities in the United States. This situation is often not fully understood even by the bearers of such documents, so police officers must therefore be alert to good faith, but erroneous, assertions of immunity by those not entitled to it.

Law enforcement officials should bear in mind, however, that the possession of these documents is an indication that the bearer might be entitled to privileges and immunities in the United States. As mentioned above, temporary duty visitors to the United Nations might have only such documents and might nonetheless be entitled to immunity in the United States. A similar situation could arise in connection with the foreign officer who has just joined a diplomatic mission or consular post and has not yet received the appropriate U.S. identity documents. In cases of doubt, police officers should always coordinate with U.S. authorities (see *Telephonic Information/Verification*, page 13).

## Tax Exemption Cards: Not Conclusive

Under international law, most members of diplomatic missions and consular posts and certain people associated with international organizations would normally be entitled to exemption from sales taxation in the United States. However, significant

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<sup>7</sup>All foreign personnel assigned to official duty at bilateral diplomatic or consular missions in the U.S. would have A-category visas. G-category visas are the equivalent, which are issued to foreigners assigned to duty at an international organization in the U.S. or at a foreign country's mission to such organization.

numbers of these individuals do not enjoy this privilege owing to considerations based on reciprocity. The Department of State issues tax exemption cards to all those entitled to such exemptions, but this does not cover all persons in the United States who are entitled to privileges and immunities, nor do such tax cards give a definitive indication of the degree of immunity to which the bearer is entitled. Accordingly, tax exemption cards should not be relied upon for immunity purposes and should be considered only as an indication that the bearer may be entitled to some degree of immunity.

### **Automobile Registration, License Plates, Drivers Licenses: Not Conclusive**

The Department of State has recently taken over the registration of automobiles of persons entitled to privileges and immunities in the United States, the issuance of distinctive license plates for such vehicles, and the issuance of operators permits for such persons to drive in the United States. As is the case with tax exemption cards, the purpose of these Federal registration documents and drivers licenses is not definitively to reflect the degree of privileges and immunities of the bearer. They should be relied upon only as an indication that the bearer is very likely entitled to at least some degree of immunity.

Vehicle license plates issued by the Department of State, in particular, must be properly understood by police authorities in order to avoid confusion. These plates are issued to persons entitled to privileges and immunities in the United States. The plates are coded to correspond generally with the degree of immunity to which the owner or principal operator is entitled (e.g., the vehicle(s) of a diplomatic agent would have a "D" prefix; that of a member of the administrative and technical staff of a diplomatic mission would have an "S" prefix; and vehicles of consular personnel have a "C" prefix). These plates may be taken as a preliminary indication that the person operating the vehicle probably enjoys the degree of immunity indicated by the license code, but it is ultimately only by determining the personal identity of the operator that his or her immunity may be established. Police officers should bear in mind that a car with "C" plates may in fact on occasion be operated by an ambassador (diplomatic agent) who is visiting a consulate. On the other hand, a diplomatic agent may not always be driving a vehicle with any kind of Federal plates; a rented or borrowed car may be in use at a particular time. The distinctive license plates are designed to provide helpful assistance in identifying vehicles which may be operated by persons enjoying diplomatic or consular immunity but are not a definitive indication that such a person is operating the vehicle at any particular time.

Vehicle registration cards are issued by the Department of State to accompany diplomatic license plates. The card provides the vehicle description, name and address of the registered owner, and the license plate number assigned to the vehicle. Verification of the registered owner, vehicle, or license plate can be made through standard access of "NLETS." Neither the registration cards nor the drivers licenses issued by the Department of State should be relied upon as conclusive indications of the status or immunity of the bearer.

## **Formal Identity Documents Issued by the Department of State**

While all of the forms of identity mentioned above provide an indication of possible immunity of a person possessing them, the only authoritative identity document is the identity card issued by the Department of State, Protocol Office.

Beginning in 1987, a new series of identification cards will be issued to all diplomatic and consular personnel and to persons associated with international organizations who are entitled to privileges and immunities. Identification cards will be issued initially to embassy personnel and at a later date to consular personnel. The issuance process is expected to take about 1 year.

There are three types of identification cards—Diplomatic (blue border for diplomats), Official (green border for employees), and Consular (red border for consular personnel). The new identification cards will be  $3\frac{3}{4}$ " x  $2\frac{1}{2}$ " and will contain a photograph of the bearer. The bearer's name, title, mission, city and state, date of birth, identification number, expiration date, and a U.S. Department of State seal will appear on the front of the card. A brief statement of the bearer's immunity will be printed on the reverse side. Space will also be provided for the bearer's signature.

While this form of identification is generally to be relied upon, law enforcement authorities are nonetheless urged immediately to seek verification as indicated below in connection with any serious incident or in any case where they have reason to doubt the validity of the card.

Police officers should be alert to the fact that newly arrived members of diplomatic and consular staffs may not yet have these official identity documents and should be prepared to contact the U.S. Department of State, Protocol Office, for verification if confronted with such situations.

## **Telephonic Information/Verification**

Inquiry should also promptly be made to the Department of State in any case where an individual claims immunity and cannot present satisfactory identification or in any case where the officer has reason to believe that invalid identification is being presented. The following telephone numbers are provided for use in this connection:

### **Re Diplomatic and Consular Personnel and International Organizations Other Than the UN**

#### *During Normal Business Hours:*

Current status of federal diplomatic license tags, registration, or other motor vehicle information:	(202) 673-5312
Diplomatic agents and family members:	(202) 647-1404
Administrative and technical, service staff, and families:	(202) 647-1405

Consular personnel and families: (202) 647-1664

International organizations: (202) 647-1406

*After Normal Business Hours:*

All inquiries should be made to the  
Command Center of the Bureau of  
Diplomatic Security, Department of  
State (operates 24 hrs./day): (202) 647-2412

**Re United Nations Personnel**

*During Normal Business Hours:*

U.N. (New York)  
verification information is  
available during normal working  
hours from the Host Country Section  
of the U.S. Mission to the United Nations: (212) 415-4131

Current status of federal diplomatic  
license tags, registration, or other  
motor vehicle information: (212) 685-1301

*After Normal Business Hours:*

Information is available from the  
Communications Section of the U.S. Mission  
to the United Nations (open 24 hrs./day): (212) 415-4444

## V

## Incidents: Guidance for Police

## General

The vast majority of the persons entitled to privileges and immunities in the United States are judicious in their actions and keenly aware of the significance attached to their actions as representatives of their sending country. On rare occasions, however, a member of this class or of his or her family may be involved in a criminal law violation. The more common violations involve traffic offenses such as illegal parking, speeding, and, less frequently, driving while intoxicated.

Whatever the offense or circumstances of contact, police officers should keep in mind that such persons are official representatives of foreign governments who are to be accorded the maximum degree of respect possible in the circumstances. It is not an exaggeration to say that police handling incidents in this country may have a direct effect on the treatment of U.S. diplomatic or consular personnel abroad.

When, in the course of responding to or investigating an apparent violation of criminal law, a police officer is confronted with a person claiming immunity, official Department of State identification should immediately be requested in order to verify the person's status and immunity. Should the individual be unable to produce satisfactory identification, and the situation would normally warrant arrest or detention, the officer should inform the individual that he or she will be detained until proper identity can be confirmed. As described previously, this can be accomplished by contacting the appropriate Department of State office.

When proper identification is available, the individual's immunity should be fully respected to the degree to which the particular individual is entitled. If it is established that the individual is entitled to the full inviolability and immunity of a *diplomatic agent*, he or she may not be arrested and should not, except in extraordinary circumstances (see **Personal Inviolability vs. Public Safety** below), be handcuffed or detained in any way. However, in an incident involving **any** person entitled to immunity, the officer should record all pertinent details from the identity card and fully record the details and circumstances of the incident in accordance with normal police procedures. As is further explained below, proper documentation of incidents is essential to permit the Department of State to take consequential steps, should they be considered appropriate.

**Personal Inviolability vs. Public Safety**

Personal inviolability is enjoyed to some degree by a majority of foreign diplomatic or consular personnel. In its most extreme form, this inviolability precludes arrest or detention in any form and forbids U.S. authorities from intruding into their residences,

automobiles, or other property. All such personal inviolability is, however, qualified by the understanding, well established in international law, that the host country does not give up its right to protect the safety and welfare of its populace and retains the right, in extraordinary circumstances, to prevent the commission of a crime. Thus, in circumstances where public safety is in imminent danger or it is apparent that a serious crime may otherwise be committed, police authorities may intervene to the extent necessary to halt such activity. This naturally includes the power of the police to defend themselves from personal harm.

## **Traffic Enforcement**

Stopping a diplomatic or consular officer and issuing a traffic citation does not constitute arrest or detention and is permissible, although signature of the citation by such individual may not be required. Accordingly, a police officer should never hesitate to follow normal procedures to intervene in a traffic violation which he or she has observed—even if immunity ultimately bars any further action at the scene, the officer should always stop persons committing moving violations, issue a citation if appropriate, and report the incident in accordance with usual procedures. Sobriety tests may be offered in accordance with local procedures but may not be required or compelled. If the police officer judges the individual to be intoxicated, the officer should not (even in the case of diplomatic agents) permit the individual to continue to drive. The officer's primary concern in this connection should be the safety of the community and of the intoxicated individual. Depending on the circumstances, the following options are available. The officer may, with the individual's permission, take the individual to the police station or other location where he or she may recover sufficiently to drive. The officer may summon, or allow the individual to summon, a friend or relative to drive; or the police officer may call a taxi for the individual. If appropriate, the police may choose to provide the individual with transportation.

In any event, the police officer involved with the incident should fully document the facts of the incident and the identity of the individual, and a written report of the incident should be promptly forwarded to the Department of State (in serious cases, report by telephone is also urged). It is Department of State policy to suspend the operators license of foreign mission personnel not considered to be responsible drivers, and this policy may only be effectively enforced if all driving-related infractions (DWI, reckless driving, etc.) are fully reported to the Department of State.

The property of a person enjoying full immunity, including his or her vehicle, may not be searched or seized. Such vehicles may not be impounded or "booted" but may be towed the distance necessary to remove them from obstructing traffic or endangering public safety. If the vehicle is suspected of being stolen or used in the commission of a crime, occupants of the vehicle may be required to present vehicle documentation to permit police verification of the vehicle's status through standard access to "NLETS." Should the vehicle prove to have been stolen or to have been used by unauthorized persons in the commission of a crime, the inviolability to which the vehicle would normally be entitled must be considered temporarily suspended, and normal search of the vehicle and, if appropriate, its detention, are permissible.

## Correct Understanding of Immunity

Frequently (and erroneously), *immunity* is understood to mean pardon, total exoneration, or total release from the responsibility to comply with the law. In actuality, immunity is simply a legal barrier which precludes U.S. courts from exercising jurisdiction over cases against persons who enjoy it and in no way releases such persons from the duty, embodied in international law, to respect the laws and regulations of the United States. Even those who properly understand the concept of immunity sometimes believe that it is senseless to waste valuable police time in the investigation and paperwork essential to building a legal case, when there is no possibility that a conviction will result. This too is an incorrect perception. It can never be ascertained with certainty at the investigation stage that the person involved will continue to enjoy immunity when his or her government is confronted with the alleged criminal actions of such person and, in any event, there are diplomatic remedies available to deal with such persons even when immunity bars prosecution and conviction. As is explained in greater detail below, there are a number of important reasons for police authorities to give careful attention to the documentation of incidents involving persons enjoying privileges and immunities. Such incidents should always be promptly reported to the Department of State.

## Waiver of Immunity

Even though individuals ultimately enjoy the protections afforded by diplomatic or consular privileges and immunities, as indicated above, it is for the benefit of the sending country that these protections are actually devised. This concept is well established in international law and explains the fact that the individual concerned does not "own" the immunity; such immunity may always be waived, in whole or in part, by the country which employs such person. While waiver of immunity in the face of criminal charges is not common, it is routinely sought and occasionally granted. The Department's ability to secure such waiver may depend to a large degree on the strength (and documentation) of the case at issue. Similarly, it is of little avail for the Department to secure waiver of immunity in a particular case, if the case has not been developed with sufficient care and completeness to permit a successful subsequent prosecution. Proper documentation and reporting by law enforcement authorities plays a critical role in both of these respects.

## The *Persona Non Grata* (PNG) Procedure

The criminal immunity which foreign diplomatic and consular personnel enjoy protects them, to the extent that it is not waived by their government, from the normal jurisdiction of the courts in respect of alleged criminal activity. One of the oldest concepts of international diplomatic law, however, is that host countries may strip persons who become unacceptable to them of their privileges and immunities, allowing such persons only a reasonable time to remove themselves from the territory of the host country. This is known as the *persona non grata* (PNG) procedure; it may be employed by the host country at any time, and there is no requirement, under international law, for such countries to justify their action. For the United States, however, use of this procedure

has inherent constraints. Even though their immunity may deprive such persons of due process in the formal sense, it is felt that in most cases this remedy should be employed only when there is reasonable certainty that a criminal act has actually been committed. The United States reputation for being a society governed by the rule of law is not served if it may be pointed to as having acted in an arbitrary, capricious, or prejudiced manner in invoking the extreme diplomatic tool of declaring a foreign diplomat PNG. Similarly, any PNG action which the U.S. Government is not able to defend in appropriate detail may be understood by the other country involved as a political action and might thus result in the reciprocal PNG of an entirely innocent American diplomat abroad. A high standard of police investigation, records, and reporting in diplomatic incident cases is therefore essential to permit the Department responsibly to exercise the diplomatic tools available to remove persons engaged in criminal activity from the United States.

### Official Acts Immunity

As explained above, official acts immunity is not a *prima facie* bar to the exercise of jurisdiction by U.S. courts. Rather, it is an affirmative defense to be raised before the U.S. court with subject matter jurisdiction over the alleged crime. If such court, in the full light of all the relevant facts, determines that the action complained of was an official act, only at that point does international law preclude the further exercise of jurisdiction by the U.S. court. Because the judicial determination in a case of this type is very much dependent on the facts surrounding the incident, a full and complete police report may be critical in permitting the court to make a just decision.

### Termination of Immunity

Criminal immunity, to the extent that it is enjoyed by a particular individual and to the extent that it is not waived by the sending State concerned, precludes the exercise by courts of the United States of jurisdiction over alleged criminal activity by such persons, whether such activity occurred during or prior to the period during which such person enjoys criminal immunity in the United States. This jurisdictional bar is, however, not a perpetual benefit for such person. With the exception of immunity for official acts (which subsists indefinitely), criminal immunity expires upon the termination of the diplomatic or consular tour of the individual enjoying such immunity, including a reasonable period of time for such person to depart the U.S. territory. Thereafter, if the law enforcement authorities of the United States can obtain personal jurisdiction over a person alleged to have committed criminal acts in the United States, normal prosecution may go forward. This assumes, of course, that the case against such individual has been adequately developed at the time of the alleged action and that any applicable statute of limitations has not run. Obviously, careful and complete police work is required at the time of the alleged crime in order to lay the basis for such delayed prosecution, and it is important that the charges against such person be pushed as far as possible in the U.S. judicial system in order to lay the basis for such prosecution. Obtaining an indictment, information, or arrest warrant, even though they would be without immediate legal effect, would lay the basis for a prosecution at a later date.



Moreover, the existence of an outstanding arrest warrant may be entered into the records of the U.S. immigration authorities and thus serve to bar the subsequent issuance of a U.S. visa permitting such person to enter the United States.

It also should be kept in mind that persons who once resided in the United States in a status affording criminal immunity may later return for pleasure or otherwise under conditions affording them no criminal immunity. Additionally, in the case of serious crimes and with respect to foreign countries with which the United States enjoys an extradition relationship, it is not precluded under international law that international extradition may be effected.

## VI

### Conclusion

It is important that the law enforcement authorities of the United States always treat foreign diplomatic and consular personnel with respect and with due regard for the privileges and immunities to which they are entitled under international law. Any shortcomings have the potential of casting into doubt the commitment of the United States to carry out its international obligations or of negatively influencing larger foreign policy interests. As stated above, however, appropriate caution on the part of law enforcement authorities should never escalate into a total "hands off" attitude in connection with criminal law enforcement actions involving diplomats.

Foreign diplomats who violate traffic laws should be cited. Allegations of serious crimes should be fully investigated, promptly reported to the Department of State, and procedurally developed to the maximum permissible extent. Local law enforcement authorities should never be inhibited in their efforts to protect the public welfare in extreme situations. The U.S. Department of State should be advised promptly of any serious difficulties arising in connection with diplomatic or consular personnel. It has provided offices to assist police authorities in verifying individuals who may enjoy inviolability or immunity. In addition, police departments should feel free to contact the Department of State for general advice in any matter bearing on diplomatic or consular personnel.

**Diplomatic and Consular Privileges and Immunities**  
**Summary of Law Enforcement Aspects**

Category		May Be Arrested or Detained	Residence May Be Entered Subject to Ordinary Procedures	May be Issued Traffic Citation	May be Subpoenaed as Witness	May be Prosecuted	Recognized Family Member
Diplomatic	Diplomatic Agent	No <sup>2</sup>	No	Yes	No	No	Same as sponsor (full immunity & inviolability).
	Member of Admin. and Tech. Staff	No <sup>2</sup>	No	Yes	No	No	Same as sponsor (full immunity & inviolability).
	Service Staff	Yes <sup>1</sup>	Yes	Yes	Yes	No—for official acts. Otherwise, Yes <sup>1</sup>	No immunity or inviolability. <sup>1</sup>
Consular	Career Consular Officers	Yes, if for a felony & pursuant to a warrant <sup>1</sup>	Yes <sup>4</sup>	Yes	No—for official acts. Testimony may not be compelled in any case.	No—for official acts. Otherwise, Yes <sup>1</sup>	No immunity or inviolability. <sup>1</sup>
	Honorable Consular Officers	Yes	Yes	Yes	No—for official acts. Yes, in all other cases.	No—for official acts. Otherwise, Yes	No immunity or inviolability.
	Consular Employees	Yes <sup>1</sup>	Yes	Yes	No—for official acts. Yes, in all other cases.	No—for official acts. Otherwise, Yes <sup>1</sup>	No immunity or inviolability. <sup>1</sup>
International Organizations	International Organization Staff <sup>3</sup>	Yes <sup>3</sup>	Yes <sup>3</sup>	Yes	Yes <sup>3</sup>	No—for official acts. Otherwise, Yes <sup>3</sup>	No immunity or inviolability.
	Diplomatic-Level Staff of Missions to Int'l Orgs.	No <sup>2</sup>	No	Yes	No	No	Same as sponsor (full immunity & inviolability).
	Support Staff of Missions to International Organizations	Yes	Yes	Yes	Yes	No—for official acts. Otherwise, Yes	No immunity or inviolability.

<sup>1</sup>This table presents general rules. Particularly in the cases indicated, the employees of certain foreign countries may enjoy higher levels of privileges and immunities on the basis of special bilateral agreements.

<sup>2</sup>Reasonable constraints, however, may be applied in emergency circumstances involving self-defense, public safety, or the prevention of serious criminal acts.

<sup>3</sup>A small number of senior officers are entitled to be treated identically to "diplomatic agents."

<sup>4</sup>Note that consular residences are sometimes located within the official consular premises. In such cases, only the official office space is protected from police entry.